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Louis B. Ferrara, Esquire  
Ferrara, Haley, Bevis & Collins  
1715 Wawaset Street  
P.O. Box 188  
Wilmington, DE 19899-0188

Alyssa M. Schwartz, Esquire  
C. Malcolm Cochran, IV  
Richards, Layton & Finger, P.A.  
One Rodney Square  
Wilmington, DE 19899

Andrew J. Vella, Esquire  
Department of Justice  
Carvel State Office Building  
Seventh Floor  
820 N. French Street  
Wilmington, DE 19801

**Re: Motion for Reargument  
State v. Gary D. DeGolyer  
Cr.A. No.: 0412014243**

Dear Counsel:

On August 18, 2006, Counsel for Defendant Gary D. DeGolyer filed and served a Motion for Reargument of this Court's August 11, 2006 bench ruling granting Patrick Moore's Motion to Quash subpoenas *ad testificandum* and *duces tecum*. The subpoenas sought to compel Moore's testimony at the trial of Defendant DeGolyer on charges of Driving Under the Influence and Disregarding a Red Light.

Patrick Moore is a medical technician, employed by Omega Medical Center, called to Delaware State Police Troop 2, on December 10, 2004, to draw the blood of Defendant DeGolyer in connection with the Driving Under the Influence charge.

The basis for Defendant's Motion for Reargument is that the Court failed to give "due consideration" (Paragraph 2) to Defendant's right to put on the stand a witness who is physically and mentally capable of testifying to events that he had personally observed and whose testimony would have been relevant and material to the defense. Keshishian v. State 386 A.2d 666 (Del 1978).

It is clear from the record of the hearing that the Court did, in fact, consider the Keshishian case in its decision on the motion. In fact, the Court referred to Keshishian by name, (Court Transcript, page 14) and accurately stated on the record the holding in the case (Id., pages 14 and 15). Further, the Court acknowledged part of Defendant's argument when it said, "Now, I, I'm going to say that I believe that if the phlebotomist made, was present and made observations, that they are relevant and perhaps material to the defense". (Id., page 15) The Court drew a distinction however, when it said, "But the idea is, we don't know that". (Id., page 15)

What defendant fails to mention regarding Keshishian is that the cited holding only applied because certain conditions did not exist in the Keshishian matter.

*"Since the witness never claimed that a testimonial privilege or non-arbitrary rule excused her from testifying or that she could not recount what she had done or observed, or that her testimony would not have been relevant and material, it follows that the defendant's constitutional right to compulsory process to obtain the appearance of a witness has been violated in this case."*  
Keshishian, at 667 (emphasis added)

It is clear from the record that Patrick Moore does not have any recollection of any observations he may have made of Defendant DeGolyer. (Court Transcript, page 16) In the absence of a recollection of any observation made by Mr. Moore regarding Defendant DeGolyer, the ruling in Keshishian is not on point with Defendant's argument and, therefore, does not apply here.

The Court finds that, by correctly citing Keshishian during oral argument, (Id., page 14 and 15) by acknowledging that any observations made would be relevant and perhaps material to the defense (Id., page 15) and by recognizing the need that the witness has made and is able to recount those observations, the Court did, in fact, give due consideration to Defendant's right to compulsory process to obtain the appearance of a witness. The Court further finds that its decision is consistent with the holding in Keshishian.

Therefore, Defendant's Motion for Reargument is DENIED.

**SO ORDERED.**